

UNITED STATES DISTRICT COURT

for the

District of New Mexico



United States of America

v.

PROCOPIO MONTOYA ATKINSON

Case No. MJ 21-1862 JFR

United States District Court
Albuquerque, New MexicoMitchell R. Elfers
Clerk of Court*Defendant(s)*

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of Nov. 12, 2021 - Dec. 20, 2021 in the county of Valencia & Bernalillo in the
 District of New Mexico , the defendant(s) violated:*Code Section**Offense Description*

18 U.S.C. § 1951:	- interference with commerce by threats or violence - (3 counts);
18 U.S.C. § 924(c)(1)(A)(iii):	- discharging a firearm during or in relation to a crime of violence - (2 counts);
18 U.S.C. §§ 922(g)(1) and 924:	- being a felon in possession of a firearm and ammunition - (2 counts);
18 U.S.C. § 924(c)(1)(A)(ii):	- brandishing a firearm during and in relation to a crime of violence; (1 count);
18 U.S.C. § 111:	- assaulting, resisting, or impeding a federal officer (1 count);
18 U.S.C. § 2119:	- attempted carjacking (1 count); and
18 U.S.C. § 2119:	- carjacking (1 count).

This criminal complaint is based on these facts:
contained within the attached 14 page Affidavit in Support of Criminal Complaint and Arrest Warrant☒ Continued on the attached sheet.*Complainant's signature*

Bryan M. Acee, FBI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/23/2021*Judge's signature*City and state: Albuquerque, New Mexico

John F. Robbenhaar, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Bryan M. Acee, being duly sworn, depose and say:

INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) and have been a sworn law enforcement officer for 21 years, serving as a police officer, detective, task force officer and special agent. I have been with the FBI since 2009 and am currently assigned to the Albuquerque Violent Crime and Gang Task Force (VCGTF),¹ where I primarily investigate violent repeat offenders.

2. This affidavit is being submitted in support of a criminal complaint and arrest warrant charging **PROCOPIO MONTOYA ATKINSON** with the following violations of the United States Code:

Count 1: 18 U.S.C. § 1951: interference with commerce by threats or violence
(Hobbs Act robbery);

Count 2: 18 U.S.C. § 924(c)(1)(A)(iii): discharging a firearm during or in relation
to a crime of violence;

Count 3: 18 U.S.C. §§ 922(g)(1) and 924: being a felon in possession of a firearm
and ammunition.

Count 4: 18 U.S.C. § 1951: interference with commerce by threats or violence
(Hobbs Act robbery);

Count 5: 18 U.S.C. § 1951: interference with commerce by threats or violence
(Hobbs Act robbery);

¹ The VCGTF is an FBI-sponsored task force comprised of investigators from the FBI, Drug Enforcement Administration (DEA), New Mexico State Police (NMSP), Albuquerque Police Department (APD), Rio Rancho Police Department (RRPD), Bernalillo County Sheriff's Office (BCSO), and Valencia County Sheriff's Office (VCSO).

Count 6: 18 U.S.C. § 111: assaulting, resisting, or impeding a federal officer;

Count 7: 18 U.S.C. § 2119: attempted carjacking;

Count 8: 18 U.S.C. § 924(c)(1)(A)(ii): brandishing a firearm during and in relation to a crime of violence;

Count 9: 18 U.S.C. § 2119: carjacking;

Count 10: 18 U.S.C. § 924(c)(1)(A)(iii): discharging a firearm during and in relation to a crime of violence; and

Count 11: 18 U.S.C. §§ 922(g)(1) and 924: being a felon in possession of a firearm and ammunition.

STATEMENT OF PROBABLE CAUSE

3. In the pages that follow, I have outlined the defendant's criminal history and facts supporting probable cause to charge PROCOPIO MONTOYA ATKINSON with the violations listed in paragraph 2. The facts and circumstances detailed herein are based on interviews with victims and witnesses, police reports, court records, video evidence, recorded interviews, discussions with law enforcement officers, and my knowledge and experience pertaining to firearms, ammunition, and violent crime.

Criminal History of the Defendant

4. The defendant in this case, PROCOPIO MONTOYA ATKINSON, is 23-years old and has eight prior convictions in New Mexico. At the time of his arrest, PROCOPIO MONTOYA ATKINSON was being sought on 11 state/local arrest warrants for probation violations, assault, armed robbery, shooting at an occupied building, and being a felon in possession of a firearm.

5. PROCOPIO MONTOYA ATKINSON has five prior felony convictions, to include: aggravated battery with a deadly weapon (D-1314-CR-2019-00600),

receiving/transferring stolen vehicle/motor vehicle (D-1314-CR-2019-00525), aggravated assault upon peace officer (D-1314-CR-2019-00524), criminal damage to property greater than \$1000 (D-1314-CR-2019-00524), and aggravated fleeing a law enforcement officer (D-1314-CR-2019-00523).

Counts 1-3:

18 U.S.C. §§ 1951, 924(c)(1)(A)(iii), 922(g)(1) - Hobbs Act robbery, discharging a firearm during a crime of violence, and being a felon in possession of a firearm.

6. The following timeline and events were compiled from victim-employee statements and in store surveillance video.

7. On November 12, 2021, at approximately 7:00 pm, PROCOPIO MONTOYA ATKINSON entered the Dollar General store located at 201 Montano Road NW, Albuquerque, New Mexico, and selected a bottle of water from the shelf. PROCOPIO MONTOYA ATKINSON took the water to the front counter and provided the female cashier with money. When the employee opened the cash register, PROCOPIO MONTOYA ATKINSON reached over the counter and attempted to grab money from the drawer. The female cashier closed the drawer before PROCOPIO MONTOYA ATKINSON could take the money. PROCOPIO MONTOYA ATKINSON then produced a pistol, walked behind the counter, and said, "Bitch, I want the money." PROCOPIO MONTOYA ATKINSON fired one round from the pistol into the ceiling. The female cashier froze in fear. A male employee, who was nearby came over and opened the register. PROCOPIO MONTOYA ATKINSON removed all the U.S. currency within the register and fled the location in a late model white minivan.

8. In PROCOPIO MONTOYA ATKINSON's haste to depart the scene of the crime, he errantly left his water bottle behind. Law enforcement officers responded to the robbery and

collected the water bottle, as well as a spent 9mm casing from PROCOPIO MONTOYA ATKINSON's discharge of his pistol.

9. VCGTF Task Force Officer (TFO) Isaac Romero (APD) responded to the robbery, interviewed the two victim employees, reviewed store surveillance video, and ensured the water bottle was tested for latent prints.

10. Employees determined the amount of cash stolen during the robbery was \$192. The police investigation following the robbery resulted in the store briefly closing. With regard to interstate commerce, I am aware Dollar General is headquartered in Goodlettsville, Tennessee, and operates more than 16,000 stores in 46 states. Dollar General currently has 17 distribution centers located around the U.S., from which all of their products are distributed. None of the distribution centers are located in New Mexico. Moreover, I am aware Dollar General conduct banking and payroll transactions with financial institutions around the country. As such, I believe the robbery of the Dollar General affected interstate commerce.

11. On November 8, 2021, TFO Romero learned the fingerprints on the water bottle came back to PROCOPIO MONTOYA ATKINSON. TFO Romero researched PROCOPIO MONTOYA ATKINSON and determined he matched the physical description of the subject depicted in the store surveillance video and described by the victim employees. Moreover, PROCOPIO MONTOYA ATKINSON had a relative with a late-model white Dodge minivan. TFO Romero also noted PROCOPIO MONTOYA ATKINSON had prior convictions for violent criminal conduct.

12. On December 13, 2021, TFO Romero obtained a state arrest warrant for PROCOPIO MONTOYA ATKINSON, which charged him with the armed robbery and related offenses (case no. T-4-FR-2021-005308). TFO Romero subsequently briefed other VCGTF

investigators on the case and learned from Valencia County TFOs that PROCOPIO MONTOYA ATKINSON was a suspect in two robberies in Belen, New Mexico.

Count 4:

18 U.S.C. § 1951 - Hobbs Act robbery

13. The following timeline and events were compiled from victim-employee statements and in store surveillance video.

14. On December 6, 2021, at approximately 6:00 pm, PROCOPIO MONTOYA ATKINSON entered the Love's Travel Stop gas station located at 1903 Camino de Llano, Belen, New Mexico. PROCOPIO MONTOYA ATKINSON selected two jackets from a clothing rack and a large glass display that contained several knives. PROCOPIO MONTOYA ATKINSON then departed the store without paying for the items and began loading them into a red Nissan Pathfinder. Two female employees confronted PROCOPIO MONTOYA ATKINSON about not paying for the items. PROCOPIO MONTOYA ATKINSON pushed both women and then punched one of them. During the scuffle, the glass knife display fell on the ground and broke. PROCOPIO MONTOYA ATKINSON retrieved several of the knives, while standing near the two female employees, and briefly handled them before throwing them into his car. PROCOPIO MONTOYA ATKINSON then got into his vehicle and drove toward the two employees. PROCOPIO MONTOYA ATKINSON missed the two women on his initial attempt and backed his vehicle up in a second failed attempt to hit the women. PROCOPIO MONTOYA ATKINSON then fled the scene in his vehicle.

15. Officers responded to the Love's and interviewed the employee-victims and witnesses. When officers subsequently reviewed the surveillance footage, they immediately recognized PROCOPIO MONTOYA ATKINSON as the suspect in the incident. As I previously

mentioned, PROCOPIO MONTOYA ATKINSON has an extensive criminal history, most of which stems from arrests in Valencia County, to include Belen.

16. Love's employees determined the total loss of items stolen from the store to be approximately \$2135.78. I am aware Love's Travel Stops and Country Stores are headquartered in Oklahoma City, Oklahoma, with more than 500 stores in 41 states. Love's utilize distribution centers in several states, which ship products to the various Love's stores. None of the distribution centers are located in New Mexico. I am aware Loves's conduct banking and payroll transactions with financial institutions around the country. As such, I believe the robbery of the Love's affected interstate commerce.

Count 5:

18 U.S.C. § 1951 - Hobbs Act robbery

17. The following timeline and events were compiled from victim-employee statements and in store surveillance video.

18. On December 9, 2021, at approximately 11:40 am, PROCOPIO MONTOYA ATKINSON entered the Walmart store located at 1 I-25 Bypass, Belen, New Mexico, and filled a shopping cart with three chain saws, various men's clothing, boots, and appliances. PROCOPIO MONTOYA ATKINSON passed all checkout stands without paying. As he approached the exit, an elderly female employee confronted PROCOPIO MONTOYA ATKINSON. PROCOPIO MONTOYA ATKINSON pushed the employee with his hands and with his shopping cart, and then pushed the cart out to the parking lot. PROCOPIO MONTOYA ATKINSON loaded the stolen merchandise into a tan colored GMC Yukon and fled the location.

19. Walmart employees reported the approximate value of the stolen merchandise was \$1,196.56. I am aware Walmart Inc. is a worldwide retail corporation headquartered in

Bentonville, Arkansas. I am aware Walmart stores offer thousands of items for sale, the bulk of which are not manufactured in New Mexico. Moreover, Walmart stores contain banking and money transfer services, and conduct banking and payroll transactions with financial institutions around the world. As such, I believe the robbery of the Walmart affected interstate commerce.

Count 6:

18 U.S.C. § 111 - assaulting, resisting, or impeding a federal officer

20. On December 17, 2021, members of the United States Marshals Service (USMS) fugitive task force established surveillance around a residence in Valencia County, New Mexico, in search of PROCOPIO MONTOYA ATKINSON, who was being sought on numerous state/local arrest warrants.² USMS deputies and task force officers observed PROCOPIO MONTOYA ATKINSON depart the residence in a light blue Ford Escape. USMS personnel followed the vehicle to a gas station, where PROCOPIO MONTOYA ATKINSON met up with some other

² PROCOPIO MONTOYA ATKINSON was being sought on the following arrest warrants:

- 1) armed robbery with a deadly weapon, assault with intent to commit a violent felony, receipt, transportation or possession of a firearm or destructive device by a felon, and shooting at dwelling or occupied building, Bernalillo County case no. T-4-FR-2021-005308,
- 2) robbery, conspiracy to commit armed robbery, Valencia County case no. M-60-FR-2021-00298,
- 3) shoplifting (over \$2,500), aggravated assault with a deadly weapon (2-counts), battery (2-counts) Valencia County case no. M-60-FR-2021-00294,
- 4) probation violation, original charge aggravated battery w/deadly weapon, Valencia County case no. D-1314-CR-2019-00600,
- 5) probation violation, original charge assault, Valencia County case no. D-1314-CR-2019-00599,
- 6) probation violation, original charge assault, Valencia County case no. D-1314-CR-2019-00598,
- 7) probation violation, original charge battery, Valencia County case no. D-1314-CR-2019-00549,
- 8) probation violation, original charge receiving/transferring stolen vehicle/motor vehicle, Valencia County case no. D-1314-CR-2019-00525,
- 9) probation violation, original charge aggravated assault upon a peace officer, Valencia County case no. D-1314-CR-2019-00524,
- 10) probation violation, original charge criminal damage to property >\$1000, Valencia County case no. D-1314-CR-2019-00524,
- 11) probation violation, original charge aggravated fleeing a law enforcement officer, Valencia County case no. D-1314-CR-2019-00523,

persons in a vehicle. The USMS task force briefed an arrest plan and started to position their vehicles in the immediate area. As they were doing so, USMS investigators observed PROCOPIO MONTOYA ATKINSON return to his vehicle and retrieve a set of binoculars. PROCOPIO MONTOYA ATKINSON then orientated the binoculars toward the task force personnel and monitored them briefly. Shortly thereafter, PROCOPIO MONTOYA ATKINSON got back into his vehicle and departed the gas station. USMS task force personnel followed PROCOPIO MONTOYA ATKINSON.

21. A short distance later, deputies observed PROCOPIO MONTOYA ATKINSON stop in the middle of the road, emerge from his vehicle, and appear to be waiting for the law enforcement officers to approach. The USMS task force supervisor directed the team to abort the surveillance because he feared PROCOPIO MONTOYA ATKINSON was armed and preparing to ambush task force personnel.

22. TFO David Booth (BCSO), who is a person designated in 18 U.S.C. § 1114, was in the area, but unfamiliar with the Valencia County roads and pulled his truck onto the shoulder to look at his map. TFO Booth was idling on the side of the road near an intersection, when he observed PROCOPIO MONTOYA ATKINSON turn left at the intersection and toward TFO Booth's vehicle. TFO Booth was wearing his green tactical ballistic vest, with BCSO and USMS Task Force Officer markings, at the time. TFO Booth observed PROCOPIO MONTOYA ATKINSON's roll down his window and pull a gator mask from his neck to cover his mouth and nose. PROCOPIO MONTOYA ATKINSON then raised a black handgun into the window opening and orientated it toward TFO Booth's truck.

23. As PROCOPIO MONTOYA ATKINSON drove closer, TFO Booth retrieved his rifle from his passenger seat and kicked the driver side door open with his foot. TFO Booth had to

maintain one foot on the brake as he maneuvered his rifle toward PROCOPIO MONTOYA ATKINSON. TFO Booth's door bounced back toward him and caused his rifle to impact his window and drift upward, and away from PROCOPIO MONTOYA ATKINSON. At that moment, PROCOPIO MONTOYA ATKINSON was starting to pass by TFO Booth's driver side door. TFO Booth feared he was about to be shot and ducked back into his truck. He then stepped on the accelerator and propelled his vehicle through the intersection in an attempt to put distance between himself and PROCOPIO MONTOYA ATKINSON.

24. PROCOPIO MONTOYA ATKINSON made a U-turn and started following TFO Booth. TFO Booth drove a short distance and made a turn onto another road, where he happened across another TFO vehicle idling on the side of the road. TFO Booth stopped next to the TFO and PROCOPIO MONTOYA ATKINSON made a U-turn and drove away from the two task force vehicles.

25. Shortly thereafter, two Deputy U.S. Marshals, travelling in the same vehicle, radioed that PROCOPIO MONTOYA ATKINSON was now following them. The other USMS task force members converged on the area and PROCOPIO MONTOYA ATKINSON fled at a high rate of speed.

26. I know TFO Booth to be a full-time member of the USMS task force. On December 17, 2021, TFO Booth was dressed in his USMS task force ballistic vest, driving his department issued vehicle, and tasked with arresting PROCOPIO MONTOYA ATKINSON on several outstanding warrants. I believe PROCOPIO MONTOYA ATKINSON committed an assault against TFO Booth within the District of New Mexico when PROCOPIO MONTOYA ATKINSON pointed a firearm at him.

Counts 7-8:

**18 U.S.C. §§ 2119, 924(c)(1)(A)(ii) - attempted carjacking and brandishing a firearm
during a crime of violence**

27. On December 20, 2021, Belen, New Mexico police officers spotted PROCOPIO MONTOYA ATKINSON in the light blue Ford Escape at a gas station located within the District of New Mexico. The Ford Escape had been reported stolen and the Belen officers knew PROCOPIO MONTOYA ATKINSON had several active arrest warrants. As officers moved in to contact PROCOPIO MONTOYA ATKINSON, he fled the gas station in his vehicle. PROCOPIO MONTOYA ATKINSON had a female passenger at the time. Another male and female had been in the back seats of the Ford Escape, but jumped out as he departed the gas station. The Belen officers activated their emergency lights and sirens and initiated a pursuit. PROCOPIO MONTOYA ATKINSON drove eastbound through Belen at a high rate of speed, ran stop signs and red lights, and into the opposite lanes of travel.

28. PROCOPIO MONTOYA ATKINSON's vehicle ran out of gas as he made a U-turn just east of the intersection of NM-309 (East River Road) and NM-47, which is located within the District of New Mexico. PROCOPIO MONTOYA ATKINSON stopped his vehicle on westbound NM-309 at a red light. There were two trucks stopped at the light in front of him. The first truck was driven by "LD," a female. LD's 14-year-old daughter was a passenger in the front seat. The second truck, which was the first vehicle stopped at the intersection, was driven by LD's husband, "JB." JB is a 62-year-old veteran and was alone in his truck.

29. PROCOPIO MONTOYA ATKINSON drew his 9mm pistol, told his female passenger to follow him, exited the Ford Escape, and approached LD's truck with his gun in his hand. He banged on LD's window and tried to open the door. The door was locked. PROCOPIO

MONTOYA ATKINSON yelled something unintelligible at LD – instructing her to open the door. LD did not unlock the doors.

30. PROCOPIO MONTOYA ATKINSON then ran to the passenger side of JB's truck, which was stopped in front of LD's truck.

Counts 9-11:

18 U.S.C. §§ 2119, 924(c)(1)(A)(iii), 922(g)(1) - carjacking, discharging a firearm during a crime of violence, and being a felon in possession of a firearm

31. PROCOPIO MONTOYA ATKINSON ran to the passenger side of JB's truck and got into the truck. PROCOPIO MONTOYA ATKINSON's female passenger jumped into the bed of JB's truck. PROCOPIO MONTOYA ATKINSON pointed his firearm at JB and told him to get out of the truck. JB was wearing a western belt buckle at the time that contained a small Derringer .22 caliber revolver. JB considered retrieving the pistol and defending himself, but then realized PROCOPIO MONTOYA ATKINSON had his gun pointed at JB's head. JB complied with PROCOPIO MONTOYA ATKINSON and started to exit his truck. As he was getting out of the truck, PROCOPIO MONTOYA ATKINSON shot JB in the lower back. PROCOPIO MONTOYA ATKINSON then pushed JB out of the truck and started to drive into the intersection.

32. Meanwhile, the pursuing Belen officers began arriving on scene and pinned their police vehicles against the truck PROCOPIO MONTOYA ATKINSON was trying to depart in. Once sufficient police vehicles blocked PROCOPIO MONTOYA ATKINSON in place, other officers rushed to the driver's side window, broke the glass, and deployed a Taser into PROCOPIO MONTOYA ATKINSON. The Taser deployment was successful and once it subsided the officers were able to remove PROCOPIO MONTOYA ATKINSON from the truck and place him in handcuffs. PROCOPIO MONTOYA ATKINSON spontaneously said that he had not meant to

shoot JB and was only trying to get away. It was at that moment that officers realized PROCOPIO MONTOYA ATKINSON had been armed and observed his weapon. His 9mm pistol had fallen from the truck in the scuffle and a partially ejected cartridge was protruding from the top of the pistol (referred to a “stovepipe”). Such malfunctions are temporary and common with pistols, particularly in close quarter gunfights. The officers rendered the 9mm pistol safe and placed it on the ground. PROCOPIO MONTOYA ATKINSON’s female associate was removed from the back of the truck and detained by officers.

33. JB was transported to the University of New Mexico Hospital (UNMH) by life flight helicopter and treated for his gunshot wound. LD remained on scene to give a statement to law enforcement and then joined her husband an UNMH.

34. Myself and other VCGTF investigators responded to the scene.

Interview of Procopio Montoya Atkinson:

35. I introduced myself to PROCOPIO MONTOYA ATKINSON, who was seated in the back of a police vehicle. I advised him of his *Miranda* rights via an FBI FD-395a form. PROCOPIO MONTOYA ATKINSON said he understood his rights and was willing to speak with me. The advisement was recorded and witnessed by TFO Ben Lankasky (VCSO). PROCOPIO MONTOYA ATKINSON signed the FD-395a. PROCOPIO MONTOYA ATKINSON recognized TFO Lankasky and apologized to him for previously trying to run the VCSO detective over during a separate incident.³

36. PROCOPIO MONTOYA ATKINSON said he was addicted to blues (fentanyl pills) and that caused him to act in regrettable ways. PROCOPIO MONTOYA ATKINSON said he had read the Bible and knew right from wrong. PROCOPIO MONTOYA ATKINSON said he

³ Aggravated assault upon a peace officer, Valencia County case no. D-1314-CR-2019-00524.

came from a good family and could not believe the situation he was in. PROCOPIO MONTOYA ATKINSON indicated he had not intended to hurt anyone, but only wanted to escape the scene. PROCOPIO MONTOYA ATKINSON acknowledged JB had been shot, but declined to admit he had shot JB or possessed the 9mm. pistol. I asked PROCOPIO MONTOYA ATKINSON if he would consent to a DNA swab and he declined. At one point, PROCOPIO MONTOYA ATKINSON said JB had been armed and was going to shoot him. Several minutes into the conversation, PROCOPIO MONTOYA ATKINSON indicated he may want to speak with a lawyer before saying anything further. I concluded my questioning of PROCOPIO MONTOYA ATKINSON at that time. The interview was recorded.

Interstate Nexus:

37. With regard to the interstate nexus requirements in the aforementioned charges, LD's vehicle is a 2014 Chevrolet Silverado truck, VIN: 3GCUKREC6EG262739. I am aware Chevrolet Silverado trucks are manufactured in in Flint, Michigan, Fort Wayne, Indiana, Springfield, Ohio, and Silao, Mexico. As such, LD's truck travelled in or affected interstate commerce.

38. JB's vehicle is a 1962 Chevrolet truck, VIN: 2C144L1126629. Older model Chevrolet trucks were manufactured in Flint, Michigan. As such, JB's truck travelled in or affected interstate commerce.

39. I collected the firearm PROCOPIO MONTOYA ATKINSON used to shoot JB from the scene. I noted it to be a Ruger model SR9 9mm pistol, serial number 336-32893. Several of the 9mm cartridges within the firearm's magazine were Federal cartridges. I am aware Ruger firearms and Federal cartridges are not manufactured in New Mexico and therefore travelled in or affected interstate commerce.

CONCLUSION:


40. Based on the information herein, I believe that there is probable cause to charge PROCOPIO MONTOYA ATKINSON with the violations listed herein. Supervisory Assistant United States Attorney Jack Burkhead reviewed this affidavit and approved charging in this matter.

Respectfully submitted,



Bryan M. Adee
Special Agent
Federal Bureau of Investigation

Electronically submitted and telephonically sworn to me on December 23, 2021.



The Honorable John F. Robbenhaar
United States Magistrate Judge
District of New Mexico